



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R08-OAR-2021-0187; FRL-10021-36-Region 8]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions from Existing Municipal Solid Waste Landfills; Control of Emissions from Existing Commercial and Industrial Solid Waste Incineration Units; Negative Declaration of Existing Hospital/Medical/Infectious Waste Incineration Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the “Act”), the Environmental Protection Agency (EPA or the “Agency”) is proposing approval of a CAA section 111(d) plan submitted by the North Dakota Department of Environmental Quality (NDDEQ or the “Department”) on July 28, 2020 to regulate landfill gas and its components from existing municipal solid waste (MSW) landfills. The EPA is also proposing approval of a CAA section 111(d)/129 plan submitted by the Department on the same date to regulate air pollutants from existing commercial and industrial solid waste incineration (CISWI) units and air curtain incinerators (ACI). These plans provide for the State’s implementation and enforcement of the federal emission guidelines (EG) for existing MSW landfills, CISWI units and ACI in North Dakota. The EPA with this proposed rule is also notifying the public that the Agency has received a request from the State of North Dakota, dated May 8, 2019, for withdrawal of a previously approved CAA section 111(d)/129 plan for hospital/medical/infectious waste incineration (HMIWI) units and for Agency approval of a negative declaration of such units within the State. Approval of this negative declaration will stand in lieu of a North Dakota CAA section 111(d)/129 plan for HMIWI units.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0187, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](https://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at [www.regulations.gov](https://www.regulations.gov). To reduce the risk of COVID-19 transmission, for this proposed action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8P-ARD, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6396, [lohrke.gregory@epa.gov](mailto:lohrke.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us” and “our” means the EPA.

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## **I. Background**

### *A. MSW Landfill 111(d) State Plan*

CAA section 111(d) requires the EPA Administrator to establish a procedure under which each state shall submit to the Agency a plan that establishes standards of performance for any ‘existing’ source for any air pollutant for which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category regulated under section 112 of the Act, but to which a standard of performance under section 111 would apply if such existing source were considered a ‘new’ source. The EPA established such a procedure by promulgating general guidelines for the adoption and submittal of state plans for existing affected facilities in 40 CFR part 60, subpart B. The EPA publishes specific state plan requirements for designated source categories in 40 CFR part 60. State plan requirements for

such source categories are known as emission guidelines and compliance times for designated facilities (EG or the “emission guidelines”). These EGs are promulgated following, or concurrent with, the publication of new source performance standards (NSPS) for the affected source category. Each EG requires each state with designated facilities in its jurisdiction to develop and submit to the EPA an approvable state plan that implements and enforces the performance standards and compliance times found within the particular EG.

On August 29, 2016, the EPA finalized revised NSPS for new MSW landfills and revised EG for existing MSW landfills in 40 CFR part 60, subparts XXX and Cf, respectively. See 81 FR 59332 (Aug. 29, 2016) and 81 FR 59313 (Aug. 29, 2016). In this set of actions an MSW landfill for which construction, reconstruction or modification was commenced on or before July 17, 2014 is considered an existing facility and subject to either a future 111(d) state plan adhering to the requirements of 40 CFR part 60, subpart Cf or a future federal plan for designated MSW landfills promulgated in 40 CFR part 62. The 2016 MSW landfills EG updates the control requirements and monitoring, reporting and recordkeeping provisions for existing MSW landfill sources. MSW landfills which commenced construction, reconstruction or modification after July 17, 2014 are considered new affected facilities subject to the NSPS in 40 CFR part 60, subpart XXX.

North Dakota submitted a 111(d) State plan for existing MSW landfills (the “MSW landfill plan”) on July 28, 2020. The MSW landfill plan was submitted to fulfill requirements of 40 CFR part 60, subparts B and Cf. The EPA must now propose approval or disapproval of the State’s submittal with reference to the general provisions for plan approval in 40 CFR part 60, subpart B and the requirements specific to plans for existing MSW landfills found in 40 CFR part 60, subpart Cf.

Approval of North Dakota’s MSW landfill plan submitted in 2020 would replace the currently approved plan for landfill gas emissions from existing MSW landfills, found at 40 CFR 62.8600—8602. That State plan was submitted to EPA in 1997 to comply with the old State plan

requirements of the EG for existing MSW landfills in 40 CFR part 60, subpart Cc, finalized by EPA on March 12, 1996 (61 FR 9919). All existing North Dakota MSW landfills subject to the old EG are now designated facilities as defined by 40 CFR part 60, subpart Cf and will be subject to the new MSW landfill plan if approved.

#### *B. CISWI 111(d)/129 State Plan*

CAA section 129 requires the EPA Administrator to establish performance standards and other requirements pursuant to section 111 of the Act for each source category of solid waste incineration units enumerated under that section of the Act. CAA section 111(a)(1)(D) establishes CISWI units as a source category subject to NSPS and EG development requirements, as outlined in the CAA section 111(d) description in section I.A of this document.

On March 21, 2011, the EPA finalized regular review and revisions to the NSPS and EG for new and existing CISWI units in 40 CFR part 60, subparts CCCC and DDDD, respectively (76 FR 15704). The most recent amendments of these subparts were finalized on April 16, 2019 (84 FR 15846). The EG at 40 CFR part 60, subpart DDDD required submittal of a CAA section 111(d)/129 state plan by August 7, 2013 from any state with operational existing CISWI or ACI units as they are defined by the subpart.

North Dakota's most recent approved CAA section 111(d)/129 State plan for CISWI and ACI units was approved on April 25, 2018 (83 FR 17923). North Dakota completed a transfer of implementing and enforcement authorities to a new State department of environmental quality since that approval. Revisions to State administrative code, creation of the NDDEQ and transfer of implementing and enforcing authorities to the Department necessitated a new approval of the State's CISWI plan. North Dakota submitted a new 111(d)/129 plan for existing CISWI units (the "CISWI plan") on July 28, 2020. The EPA must now propose approval or disapproval of the State's submittal with reference to the general provisions for plan approval in 40 CFR part 60, subpart B and the requirements specific to plans for existing CISWI units found in 40 CFR part 60, subpart DDDD.

### *C. HMIWI Negative Declaration of Sources*

CAA section 129 authorizes the EPA to require states to submit a plan for the control of air pollutants from existing solid waste incineration units enumerated by that section according to emission guidelines and compliance times promulgated in 40 CFR part 60 by the EPA under the authority of CAA section 111(d). CAA section 129(a)(1)(C) requires the EPA's promulgation of an EG for HMIWI units and a state's submittal of a control plan for such units. The EG for existing HMIWI units may be found at 40 CFR part 60, subpart Ce. However, 40 CFR 60.23(b) says that, "if no designated facility is located within a State, the State shall submit a letter of certification to that effect to the Administrator [...]. Such certification shall exempt the State from the requirements of [the general provisions for adoption and submittal of state plans]."

North Dakota submitted a letter making a negative declaration of existing HMIWI units within the State (the "negative declaration") on May 8, 2019. The letter requests withdrawal of the State's previously approved CAA section 111(d)/129 HMIWI plan (40 CFR 62.8610) and approval of the negative declaration in lieu of a state plan. The EPA must now propose approval or disapproval of the State's negative declaration with reference to the general provisions for plan submittal in 40 CFR part 60, subpart B and the general provisions for plan approval in 40 CFR part 62, subpart A.

## **II. EPA's Submittal Analysis**

### *A. MSW Landfill State Plan*

The EPA has reviewed the North Dakota 111(d) MSW Landfill State plan submittal in the context of the plan completeness and approvability requirements found in 40 CFR part 60, subparts B and Cf. The EPA is proposing with this action to determine that the submitted section 111(d) plan meets the above cited requirements. The North Dakota plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of the general provisions for adoption and submittal of state plans found

in 40 CFR part 60, subpart B. North Dakota has chosen to author a State plan document and provide all implementation and enforcement authority for all State plan requirements through revisions to the North Dakota Administrative Code (NDAC) and existing portions of the North Dakota Century Code (NDCC). Specifically, the State has appropriately incorporated all EG performance standards and other source requirements in NDAC section 33.1-15-12-02, subpart Cf. Legal authority to implement and enforce the incorporated source requirements and State plan document is found in NDCC chapter 23.1-06. The State plan document, the relevant NDAC and NDCC sections, and all other relevant plan submittal materials may be found in the docket for today's action. A complete analysis of the State's legal authority to implement and enforce the plan and source requirements, the submittal's completeness and the approvability of the State plan document and incorporation of source requirements can be found in the technical support document (TSD) for this action. The TSD is available for review and may be found in the docket associated with this proposed rule. In this action, EPA is also proposing to incorporate by reference (IBR) Title 33.1, Article 15, Chapter 12, section 2, subparts A and Cf of the NDAC, effective as amended on July 1, 2020. This NDAC chapter includes the relevant source requirements specific to existing MSW landfills.

#### *B. CISWI State Plan*

The EPA has reviewed the North Dakota 111(d) CISWI State plan submittal in the context of the plan completeness and approvability requirements found in 40 CFR part 60, subparts B and DDDD. The EPA is proposing with this action to determine that the submitted section 111(d) plan meets the above cited requirements. The North Dakota plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of the general provisions for adoption and submittal of state plans found in 40 CFR part 60, subpart B. North Dakota has chosen to author a State plan document and provide all implementation and enforcement authority for all State plan requirements through revisions to the NDAC and existing portions of the NDCC. Specifically, the State has

appropriately incorporated all EG performance standards and other source requirements in NDAC section 33.1-15-12-02, subpart DDDD. Legal authority to implement and enforce the incorporated source requirements and State plan document is found in NDCC chapter 23.1-06. The State plan document, the relevant NDAC and NDCC sections, and all other relevant plan submittal materials may be found in the docket for today's action. A complete analysis of the State's legal authority to implement and enforce the plan and source requirements, the submittal's completeness and the approvability of the State plan document and incorporation of source requirements can be found in the TSD for this action. The TSD is available for review and may be found in the docket associated with this proposed rule. In this action, EPA is also proposing to incorporate by reference (IBR) Title 33.1, Article 15, Chapter 12, section 2, subparts A and DDDD of the NDAC, effective as amended on July 1, 2020. This NDAC chapter includes the relevant source requirements specific to existing CISWI.

### *C. HMIWI Negative Declaration*

The EPA has reviewed the North Dakota negative declaration of existing HMIWI units in the context of general submittal approvability provisions found in 40 CFR part 60, subpart B and part 62, subpart A. The EPA is proposing with this action to determine that the State's negative declaration is approvable as it meets all negative declaration requirements as set forth in the previously mentioned general provisions. Analysis of the State's declaration can be found in the TSD for this action. The TSD is available for review and may be found in the docket associated with this proposed rule.

### **III. Proposed Action**

The EPA is proposing to approve the North Dakota section 111(d) State plan for existing MSW landfills pursuant to 40 CFR part 60, subparts B and Cf. We are also proposing to approve North Dakota's section 111(d)/129 State plan for existing CISWI units pursuant to 40 CFR part 60, subparts B and DDDD. Finally, the EPA is also proposing to approve the State's negative declaration of existing HMIWI units and to publish this declaration in lieu of a state plan



submitted pursuant to 40 CFR part 60, subpart Ce. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart JJ to reflect these approval actions. These approvals are based on the rationale provided in section II of this preamble and discussed in detail in the TSD associated with this rulemaking action. The scope of the proposed approval is limited to the provisions of 40 CFR parts 60 and 62. The EPA's proposed approval of the North Dakota MSW landfill plan is limited to those landfills that meet the criteria established in 40 CFR part 60, subpart Cf. Our proposed approval of the North Dakota CISWI plan is limited to those incinerator units that meet the criteria established in 40 CFR part 60, subpart DDDD.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant at existing MSW landfills, as stipulated in 40 CFR 60.30f(c). With respect to existing CISWI and ACI units, the Administrator also continues to retain the several authorities listed under 40 CFR 60.2542.

#### **IV. Incorporation by Reference**

In this document, the EPA is proposing to incorporate by reference NDDEQ rules regarding existing MSW landfills and CISWI units discussed in section II of this preamble (NDAC section 33.1-15-12-02, subparts A, Cf and DDDD) in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R08-OAR-2021-0187, at <https://www.regulations.gov> and at the EPA Region VIII Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve section 111(d) and section 111(d)/129 state plan submittals that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B, Cf and DDDD; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) and section 111(d)/129 state plan

submittals, the EPA's role is to approve state choices, provided that they meet the approval criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) and section 111(d)/129 plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the State. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial and industrial solid waste incineration, Hospital medical and infectious waste incineration, Incorporation by reference, Intergovernmental relations, Methane, Municipal solid waste landfill, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: \_March 15, 2021.

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Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.

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